 74-7957

[redacted]

November 30, 1974

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The Hon. William E. Colby
Director of Central Intelligence
Langley, Virginia

Dear Mr. Colby:

Enclosed for your review, should you find it of interest, is a revised draft of the study, Legal Authority for the Conduct and Control of Foreign Intelligence Activities [prepared for the Commission on the Organization of the Government for the Conduct of Foreign Policy].

This study and the issues which it poses will be considered by the Murphy Commission at its next meetings on December 16-17, 1974, by which time comments from OGC/CIA, Professor Elliff of Brandeis, and the former General Counsel, Mr. Houston will be available for consideration by the Commission.

STAT When [redacted] of the IC staff suggested that I discuss my study with you, I responded (last summer) that there was not then reason to consume your time. If you do have an opportunity to read the enclosed study and find that a discussion of issues therein raised would be helpful, I would be glad to come out from Washington at some time during the week of December 16-20. Because this study was prepared for the Murphy Commission and not the executive branch, there is no need for detailed consideration. On the other hand, elaborate review of proposed legislation to protect foreign intelligence sources and methods is probably overly complex for the Commission, but possibly helpful to the executive branch.

There are four issues which may well interest you; the first two relate to your duty to protect intelligence sources and methods; the third relates to your coordination duties vis à vis NSA; and the fourth poses the question as to whether formal legal opinions for covert action, by legitimating certain activities while inhibiting others, would be appropriate. Although my review of draft legislation to protect intelligence sources and methods is likely to elicit a plausible defense from OGC/CIA, there remains the more important policy issue as to whether statutory power of injunctive relief would really assist in fulfilment of your duties under 50 U.S.C.A. §403(b)(3). [See the attached copy of a letter to Mr. Houston, dated November 30, 1974]. Secondly, there is the issue as to whether the legal status of technical collection systems is likely of amelioration.

Third, there is the issue as to whether Congressional legislation for NSA would be appropriate, either to legitimate transnational collection missions or to assure a communitywide responsiveness in lieu of a Defense-dominated clientelle. Both the 1973 and 1974 reports of Leo Cherne, to PFIAB, have reinforced my view that new legislation for NSA would be appropriate. Should you be interested in this issue, it would be appropriate for me to make prior arrangements to transmit to your office copies of the brief summary [Appendix 3, Conf.] deleted per request of NSA from the unclassified text, and a more detailed and highly-classified supplement.

STAT Fourth, the proposition that legal opinions would tend to legitimate greater covert action activity may be of interest. [redacted] with whom I have discussed this matter, has suggested a meeting with Mr. Nelson. In the event that you would be interested in reviewing this subject with me, it would probably make sense for me to obtain reactions from Mr. Nelson and the OGC staff at an earlier meeting.

Lastly, I would like to note that my lack of satisfaction with various of the intelligence papers prepared for the Murphy Commissio is not in any substantial way the consequence of any lack of coopera tion on the part of the USIB-member agencies. On the contrary, all the agencies have been most cooperative, and the IC staff has been most helpful. Our intellectual deficiencies are self-imposed.

Very truly yours,

William R. Harris

William R. Harris

Enclosure as stated.

November 30, 1974

Lawrence R. Houston, Esquire

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Dear Mr. Houston:

Enclosed please find an updated set of Tabs [A-K, inclusive] which are part of Appendix 1 to the draft study, Legal Authority for the Conduct and Control of Foreign Intelligence Activities, October 30, 1974, revised November 22, 1974. These should be substituted for the Tabs which you should have previously received.

Summary analysis of the Department of Justice draft legislation of October 15, 1974 [Tabs H and K], found at Tabs I and J, suggests that the best working draft of intelligence sources and methods legislation remains the OGC/CIA draft of September 1974, found at Tab F. My substantial dissatisfaction with this legislation has been addressed at pp. 33-38 and in the introductory remarks of Appendix 1.

If the Beacon Theaters constraints are as significant as I believe they are likely to be, then the marginal protection afforded by statutory prescription of injunctive relief is likely to be slight -- scarcely an improvement, if any, beyond relief under rights of contract. The costs of this marginal increment of injunctive relief may include: (i) some probability, however remote, that the entire statute will fail on constitutional grounds; (ii) some probability that the federal judiciary will be less favorably disposed to enforcement of equitable relief when remedies at law (as with the British Official Secrets Act) are seen as increasingly adequate; (iii) the high probability that a proposal for injunctive relief by statute will serve as a lightning rod to attract Congressional opposition, hence reduce the probability of Congressional enactment; and (iv) the costs of "success," assuming that a gag statute is enacted, in reinforcing the view that much that CIA does must be sufficiently nefarious to require such extraordinary protection.

If my analysis is correct (and you may decide it is not), then there remains a tactically complex question as to whether the proposal for injunctive relief should be carried forward into the 94th Congress, so as to obtain credit for its abandonment as part of a legislative compromise, or whether the proposal is only an albatross which should be abandoned at the first polite opportunity, presumably in the interlude between the 93rd and 94th Congresses. Your comments on the many other issues raised in my study would be appreciated.

Sincerely yours,

William R. Harris

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Re

We your wish to get our O&C/DDO reaction in advance prior to DCI reading — so let DCI have first crack at this.

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